

(A)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE ANDREU,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

Case No. 07 C 6132

Judge Samuel Der-Yeghiayan

Magistrate Judge Mason

NOTICE OF FILING

JAN 07 2008
FILED

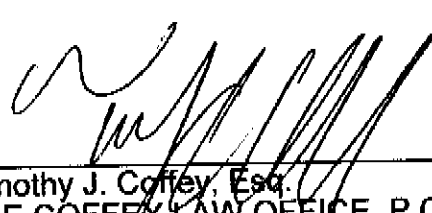
TO: D. Scott Watson, John A. Klegas and Ellen M. Girard
Quarles & Brady LLP
Attorneys for United Parcel Service, Inc.
500 West Madison
Suite 3700
Chicago, IL 60661

JAN - 7 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Please take notice that on April 4, 2007, Plaintiff caused to be filed with the Clerk of the United States District Court for the Northern District of Illinois his Motion for Partial Summary Judgment, Local Rule 56.1(a)(3) Statement of Material Facts in Support of Motion for Partial Summary Judgment, Exhibits in Support of Motion for Partial Summary Judgment, and Memorandum of Law in Support of Motion for Partial Summary Judgment, copies of which are enclosed herewith and have been served upon you.

By:


Timothy J. Coffey, Esq.
THE COFFEY LAW OFFICE, P.C.
Attorneys for JOSE ANDREU
1403 E. Forest Avenue
Wheaton, IL 60187
(630) 534-6300

CERTIFICATION OF SERVICE

I hereby certify that I served a true, accurate and complete copy of the foregoing Notice of Filing and Motion for Partial Summary Judgment, Local Rule 56.1(a)(3) Statement of Material Facts in Support of Motion for Partial Summary Judgment, Exhibits in Support of Motion for Partial Summary Judgment, and Memorandum of Law in Support of Motion for Partial Summary Judgment upon Defendant to the following attorneys of record for Defendant by first-class, U.S. mail, postage pre-paid, on the 7th day of January, 2008.

D. Scott Watson
Quarles & Brady LLP
500 West Madison
Suite 3700
Chicago, IL 60661



Timothy J. Coffey
THE COFFEY LAW OFFICE, P.C.
Attorneys for JOSE ANDREU
1403 E. Forest Avenue
Wheaton, IL 60187
(630) 534-6300

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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MICHAEL W. DOMBINS
CLERK, U.S. DISTRICT COURT

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Plaintiff,

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UNITED PARCEL SERVICE, INC.,

Defendant.

Case No. 07 C 06132

Judge Samuel Der-Yeghiayan

Magistrate Judge Mason

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, JOSE ANDREU ("Jose"), by and through his attorneys, THE COFFEY LAW OFFICE, P.C., and pursuant to Rule 56 of the Federal Rules of Civil Procedure, respectfully moves this Honorable Court for summary judgment against Defendant UNITED PARCEL SERVICE, INC. ("UPS") on its "failure to mitigate" affirmative defense, and in support thereof states as follows:

1. On November 9, 2007, UPS filed its Answer and Affirmative Defense to Plaintiff's Complaint. As and for its sole affirmative defense, Defendant alleged as follows:

Plaintiff is barred from recovery because he has failed to exercise reasonable efforts to mitigate his alleged damages.
2. It is UPS's burden to prove that Jose failed to mitigate his damages.
3. During the course of this matter, UPS propounded various discovery requests upon Jose, deposed Jose, and took another deposition in this case. In short, UPS has had every opportunity to discover and produce evidence in support of its failure to mitigate defense.

4. As more fully set forth, explained and legally supported in Plaintiff's Memorandum of Law in Support of this Motion filed concurrently herewith, UPS, however, cannot meet its obligation to prove a failure to mitigate as a matter of law.
5. Plaintiff's Local Rule 56.1(a)(3) Statement of Material Facts and supporting Exhibits have also been filed concurrent with thus Motion.

Wherefore, Plaintiff, Jose Andreu, respectfully requests that this Court enter summary judgment against Defendant UPS on its failure to mitigate affirmative defense.

Respectfully submitted,
Plaintiff, JOSE ANDREU,

By:



Timothy J. Coffey
THE COFFEY LAW OFFICE, P.C.
Attorneys for JOSE ANDREU
1403 E. Forest Avenue
Wheaton, IL 60187
(630) 534-6300